

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 01-10732
Chapter 7

JULIE DAWN SMITH
Debtor

WILLIAM M. FOSTER, TRUSTEE

Plaintiff

v

Adversary Proceeding
No. 01-1231

JULIE DAWN SMITH

Defendant

MEMORANDUM

William M. Foster is the trustee in the bankruptcy case of Julie Dawn Smith. He brought this suit to revoke her discharge and to sell property free and clear of the interests of third parties. The trustee asked that the discharge be revoked on the ground that Ms. Smith had fraudulently concealed her interest in some real property. 11 U.S.C. § 727(d)(1). Ms. Smith failed to file an answer or otherwise defend. The trustee filed a motion for a default judgment. The clerk entered a default and gave the Ms. Smith notice of the hearing on the trustee's motion for default judgment. The debtor did not appear at the hearing, and no one appeared on her behalf.

At the hearing, the court pointed out that it could not enter a default judgment allowing the sale free and clear because the other persons with interests in the property had not been parties to this proceeding. 11 U.S.C. § 363(f), (h); Fed. R. Bankr. P. 6004(c) & 7001(3). The trustee's attorney acknowledged that he would probably need to file another proceeding.

The record does not reveal any reasons for not entering a default judgment revoking the debtor's discharge. 11 U.S.C. § 727(d),(e). Since revocation of the discharge is equivalent to denial of the discharge, the trustee need not take any other action regarding the discharge.

The court's decision ends this adversary proceeding so far as it concerns the discharge. The attempt to sell the property under § 363 is legally distinct and may require additional, separate proceedings by the trustee. Therefore, the court sees no just reason to delay the finality of the judgment revoking the discharge and directs the entry of a final judgment. Fed. R. Bankr. P. 7054(a); Fed. R. Civ. P. 54(b). The court will enter an order.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

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JUDGMENT

In accordance with the court's memorandum opinion entered this date,

It is ORDERED, ADJUDGED AND DECREED that the discharge of the debtor, Julie Dawn Smith, which was entered on May 11, 2001, is hereby revoked.

It is FURTHER ORDERED that since there is no just reason for delay, this judgment is final pursuant to Fed. R. Bankr. P. 7054(a) and Fed. R. Civ. P. 54(b).

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

[entered 10/11/02]